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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/599,712 | 06/22/2000 | Timothy E. Dickson | 2400-370 | 8765 |
| 27820 | 7590 | 02/23/2004 | EXAMINER | |
| WITHROW & TERRANOVA, P.L.L.C. P.O. BOX 1287 CARY, NC 27512 | | | GORT, ELAINE L | |
| | | ART UNIT | PAPER NUMBER | |
| | | 3627 | | |

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. 09/599,712 | Applicant(s) DICKSON, TIMOTHY E. |
|------------------------------|-------------------------------|-------------------------------------|
| Examiner | Art Unit 3627 | |
| Elaine Gort | | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 05 January 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-7 and 13-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 13 is/are allowed.

6) Claim(s) 1-7 and 14-20 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. ____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-7 and 14-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claiming the human body or parts of the human body is non-statutory and is being claimed in claim 1 line 5 ("living customer"); claim 7 line 11; and claim 14 line 5.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1, 2, 4, 6, 7, 14, 15, 19 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Nusbaumer et al. (US Patent 5,944,069).

Nusbaumer et al. discloses the claimed fuel dispensing system.

Nusbaumer et al. discloses a fuel dispensing system with a system controller configured to produce an accounting of each fuel dispensing transaction associated with the dispensers and customers, each transaction having associated therewith an unique indicia (such as the control system operating the fuel dispensers with the associated accounting system which accounts for each transaction that has associated unique indicia such as pump id, vehicle id, user id, time, date, etc.; the dispenser is adapted to receive payment from the accounting departments of the railroads which inherently include living people which are associated with the vehicles thru the organization);

Fuel dispensers (such as dispensers used to fuel locomotives as discussed in column 6 lines 5+) in data transfer communication with the controller, configured to dispense fuel, not having a receipt printer (see figures 2, 4, and 5) and adapted to receive payment from a living customer associated with the vehicle, the payment being for a fueling transaction (payment information is entered when identification of the locomotive and personal id code is entered); and

A fuel dispensing transaction accounting delivery station in data transfer communication with the system controller, and located remotely from the dispensers which are configured to optionally deliver a transaction accounting associated with the fueling transaction to the customer, based on the indicia (such as at the central data

terminal and the railroad's accounting where the transaction data is used for accounting and provided based on customer indicia and an operator may provide any transaction in hardcopy format using a printer, see reference 150 in figure 1, and column 6 lines 35+; the transaction delivery station provides an accounting to the accounting departments to the railroads which inherently include living people which are associated with the vehicles thru the organization; these employees access the system to obtain the accounting information for accounting purposes; it is foreseeable that the vehicle driver also could have access to the accounting information sent thru the system and also that the vehicle driver carry out accounting functions).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nusbaumer et al.

Nusbaumer et al. discloses the claimed device but is silent on the topics of tokens and biometric sensors. Examiner takes official notice that tokens and biometric sensors are notoriously old and well known in the art of security to prevent fraud by accurately identifying users with a required device proving identification (token) or by identifying unique body properties of an individual such as an individual's unique

fingerprint. It would have been obvious at the time of the invention for one of ordinary skill in the art to utilize tokens and/or biometrics in the system of Nusbaumer et al. to prevent fraudulent use by non-authorized users of the system.

Allowable Subject Matter

7. Claim 13 is allowed. Claims 3 and 5 claim allowable subject matter but must overcome the 101 rejection and be written in independent form to be allowed.

Response to Arguments

8. Applicant's arguments filed 1/5/04 have been fully considered but they are not persuasive except regarding the arguments corresponding to claims 3, 5 and 13.

Applicant has argued that Nusbaumer et al. does not disclose the living customer associated with the vehicle receiving the transaction information. Examiner contends that the individuals handling accounting information are living customers associated with the vehicles via the organization. It is also foreseeable that the drivers handle their own accounting.

See above details under the rejections for clarification to all further arguments.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is (703)308-6391. The examiner can normally be reached on Monday through Thursday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703)308-5183. The fax phone number for the organization where this application or processing is assigned is (703)872-9327.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

EG



February 19, 2004

 2/20/04

ROBERT P. OLSZEWSKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600